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Independent Recording Industry Services, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

INDEPENDENT RECORDING
INDUSTRY SERVICES, INC.,

Plaintiff,

v.

DON LICHTERMAN; SUNSET
RECORDS, INC.; SUNSET HOLDING
CO., LLC; and SUNSET RECORDS
GROUP,

Defendants.

Case No.

COMPLAINT FOR:

- (1) DEFAMATION;
(2) INTENTIONAL INTERFERENCE WITH
CONTRACT;
(3) INTENTIONAL INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE;
(4) NEGLIGENT INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE;
AND
(5) CIVIL CONSPIRACY

Jury Trial Demanded

COMES NOW plaintiff Independent Recording Industry Services, Inc. ("Plaintiff") alleging on knowledge with respect to its own actions and otherwise on information and belief as follows:

The Parties

1. Plaintiff Independent Recording Industry Services, Inc. ("IRIS") was, and is, a corporation organized under the laws of the State of California, with its principal place of business located in the City and County of San Francisco, California. IRIS provides digital media distribution and other services to record labels and other content providers.

2. Defendant Sunset Holding Co., LLC was at all relevant times, and is now, a limited liability company organized under the laws of the State of New Jersey, with its principal place of business located in New York City, New York.

3. Defendant Sunset Records, Inc. was at all relevant times, and is now, a corporation organized under the laws of the State of Delaware, with its principal place of business located at New York City, New York. Plaintiff is informed and believes that Sunset Records, Inc. is a wholly-owned subsidiary of Sunset Holding Co., LLC.

4. Defendant Sunset Records Group was at all relevant times, and is now, a general partnership with its principal place of business located in New York City, New York. Plaintiff is informed and believes that Sunset Holding Co., LLC and Sunset Records, Inc. are partners in Sunset Records Group and that the citizenship of all its partners is in the State of New York.

5. Defendant Don Lichterman ("Lichterman") is an individual citizen of the State of New York and is the founder and chief executive officer of Sunset Holding Co., LLC, Sunset Records, Inc. and Sunset Records Group. On information and belief, Lichterman is the sole member of Sunset Holding Co., LLC and the sole shareholder of Sunset Records, Inc.

6. Upon information and belief, at all relevant times, through its ownership of Sunset Records, Inc., Sunset Holding Co., LLC had both the right and the authority to control the actions of said entity.

7. Upon information and belief, at all relevant times, as a founder and chief executive officer, Lichterman had both the right and the authority to control the actions of Defendants Sunset Holding Co., LLC and Sunset Records, Inc.

8. At all relevant times, each of the Defendants was the agent, servant, employee, partner, joint venturer, representative, subsidiary, parent, affiliate, alter ego, or co-conspirator of the others, had full knowledge of and gave substantial assistance to the alleged activities, and in doing the things alleged, each was acting within the scope of such agency, service, employment, partnership, joint venture, representation, affiliation, or conspiracy, and each is legally responsible for the acts and omissions of the others.

9. Defendants all are doing business in and/or have directed their activities at California, and specifically this judicial district. By way of example, all tortious acts of Defendants alleged herein were directed at individuals and entities located in California and in this judicial district. Further, Defendants advertise, promote, sell, and support customers in California and in this judicial district. In addition, Defendants boast that their group of companies “and its global operation, acquire, develop, and distribute major music recording artists, home visual entertainment products, online-digital entertainment technologies and music and filmed entertainment worldwide.” Defendant Sunset Records Group also negotiated and entered into a music distribution agreement with IRIS directly within this judicial district, in which Defendant agreed to the application of California law.

Jurisdiction and Venue

10. This action is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interests and costs. Accordingly, this Court has original subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

11. Venue in this district is appropriate, pursuant to 28 U.S.C. § 1391, because Plaintiff resides in this district, a substantial part of the events giving rise to the dispute occurred in this district, a substantial part of the property that is the subject of the action is situated in this district, and the Court has personal jurisdiction over each of the parties as alleged throughout this Complaint.

Background Facts

12. On or about January 6, 2006, Defendant Sunset Records Group, an independent record label, entered into a Content Distribution Agreement with IRIS for digital distribution of music (the “Agreement”).

13. In early January 2008, a dispute arose between IRIS and Defendants under the Agreement.

14. On or about January 16, 2008, Defendant Lichterman—in apparent reaction to the contract dispute—commenced a campaign of abuse, harassment, interference and physical intimidation, by sending literally hundreds of emails a day (many of which were near identical copies) to at least six individual officers and employees of IRIS (the “Emails”). In the Emails, Lichterman made offensive and derogatory comments about, and expressly threatened acts of physical violence against, specific IRIS employees. Further, the sheer volume of Emails sent by Lichterman was designed to interfere with and disrupt IRIS’s business activities. The Emails included the following statements:

- “I would like to pop you right in the face so your nose just breaks and bleeds all over the place.”
- “you are all such fucking losers, you just continue to do things in a very illegal way.”
- “You are all a bunch of douches....Even the cunt fat shit-publicity that is now copied on these hundreds of letters.”
- “I will keep dedicating my time to send these emails. I’ll bet every female in that building is fat and gross just like that publicity cunt face.”
- “You want to live with me so bad...you got it fuck heads.....you will hear from me so many times.....This is actually fun....I have never called people faggots and losers and cunts to their faces or in writing and it feels sort of good.”
- “I will fuck you up in person.”
- “you fag boy...you better work out dude...It would not even matter anyway unless you know more [mixed martial arts] than I know every day. I just cannot wait to meet you in person face to face.”

- 1 • “That is what you will have to live with every day and when you go to [South by
2 Southwest, a music industry trade conference attended by record labels and companies
3 such as IRIS] because as you can see, I am fucking nut when it comes to scum bags in
4 life. This will not stop any time soon.”

5 15. On or about January 17, 2008, Defendant Lichterman sent a newsletter by email on
6 behalf of the Sunset Records Group—and thereby on behalf of all Defendants—directed to third
7 party “artists, producers, label heads, business partners and affiliates” (the “Newsletter”). In the
8 Newsletter, Defendants make the following statements, among others (emphasis added):

- 9 • “There is a corrupt company that has **hijacked, stolen and is reselling** your
10 copyrights in a an illegal way. They are called IRIS Distribution and they are located
11 in San Francisco. They have control of your copyrights today.”
- 12 • “In doing that with our digital titles, this group of scum bags that have ZERO
13 experiences in the music industry, claims they have a contract with the Sunset
14 Records Group, Inc. which was a Delaware Company. We have that contract which
15 has an incorrect address, incorrect telephone and there is nothing about this current
16 company that is correct on that 2006 agreement.”
- 17 • “They have **literally stolen** and blocked access of your copyrights.”
- 18 • “I would assume this IRIS company will continue to sell your copyrights even though
19 we are dissolving this part of the company.”
- 20 • “These people are not even remotely knowledgeable about this industry and they are
21 awful at their jobs.”
- 22 • “I urge you not only to never use this IRIS Distribution group of idiots and
23 conversely, I would also spread the word to every band to never go near this
24 company. They will NEVER get paid their money by this company. **They steal**
25 **money** from young and up coming music acts and young labels with no care but
26 padding their catalog.”
- 27 • “I have no clue how they got hold of your catalog. I think when the deal changed
28 over last year, they swooped in to make this illegal claim.”

- **"I will be doing a press release over 13,000 media outlets** making sure the search engines are filled with articles about how this company works **to steal music and pirate music.**"
- **"I will send out a newsletter to our 26,000 plus subscribers** who are all industry people making sure they know that there are company's like this in the industry."

16. On or about January 18, 2008, Defendant Sunset Holding Co., LLC caused the a press release (the "Press Release") to be published and disseminated to the general public via Billboard Media Wire, which is syndicated and carried by hundreds of print and electronic media outlets. Relevant portions of the Press Release are set forth below:

Sunset Holding Co. closes the digital only record label, eSunset Records and its digital distribution company.

In a stunning move this week at the Sunset Holding Co., the parent company shut down its digital only record label, and its digital distribution company. Don Lichterman calls the move "drastic" yet "overdue" with the company fielding unnecessary distracting issues relating to that digital distribution. ...

Lichterman says, "The people that have infiltrated the music industry from the computer industry are weak people." He then says that people at companies like IRIS Distribution "are not music people." ...

... "I think about how easy it is to deal with proven successful companies that are in this industry compared to trying to deal with amateurs like IRIS Distribution." ...

... Sunset Holding is faced with dealing with IRIS Distribution that has stolen control of eSunset's copyrights. "They are a corrupt company that has no way to pay for sales while they pirate music in an illegal way" ...

... Sunset's digital divisions have also introduced the company to people that Lichterman calls, "disgusting people like staff people at IRIS." ... "I do not want to feed into this part of the industry" and it is clear today that IRIS Distribution continues to sell these copyrights illegally ...

17. In the Newsletter and the Press Release, Defendants published false statements to a group of third parties and referred to IRIS specifically, using its established trade name and registered trademark.

18. The statements of Defendants in the Newsletter and the Press Release, individually and taken together, falsely accuse IRIS of theft, inculcate IRIS with moral turpitude, and charge IRIS with unfitness and lack of integrity in the performance of its business.

1 19. The statements of Defendants in the Newsletter and the Press Release were each
2 knowingly false when made and were designed to harm IRIS's reputation and to injure IRIS in its
3 business and profession.

4
5 **First Claim for Relief**
6 **(Defamation)**

7 20. Plaintiff incorporates by reference each of the allegations in the preceding paragraphs
8 of this Complaint as though fully set forth here.

9 21. As alleged herein, Defendants made false statements concerning IRIS to third
10 persons and/or in a manner that caused publication of the false statements to third persons.

11 22. Defendants knew that said statements were false and/or made said statements with
12 reckless disregard as to whether they were false. In the alternative, Defendants were negligent in
13 making said statements based on available information.

14 23. Defendants' false statements were of a nature to deprive IRIS of patronage or trade,
15 or to render it odious and contemptible to those with whom IRIS has had or might reasonably expect
16 to have business dealings.

17 24. Publication of Defendants' outrageous statements has caused and is continuing to
18 cause specific and irreparable harm to IRIS, including injury to its business reputation.

19 25. As a direct and proximate result of Defendants' wanton publication of these false
20 statements to third parties, Plaintiff has been generally, specially and consequentially damaged in an
21 amount to be proven at time of trial.

22 26. The aforementioned conduct of Defendants was willful and malicious and was
23 intended to oppress and cause injury to Plaintiff, and therefore Plaintiff is entitled to an award of
24 exemplary and punitive damages under California Civil Code Section 3294 in an amount to be
25 established at trial.

26 **Second Claim For Relief**
27 **(Intentional Interference with Contract)**

28 27. Plaintiff incorporates by reference each of the allegations in the preceding paragraphs
of this Complaint as though fully set forth here.

29. Defendants knew of the contracts between Plaintiff and its third-party customers.

30. Defendants intentionally took action, as further described herein, designed to induce a breach or disruption of the contractual relationships between Plaintiff and its customers.

31. Defendants' actions have in fact interfered with and disrupted the contractual relationships between Plaintiff and its customers.

32. As a direct and proximate result of Defendants' interference with Plaintiff's contractual relationships, Plaintiff has been generally, specially and consequentially damaged in an amount to be proven at trial.

33. The aforementioned conduct of Defendants was willful and malicious and was intended to oppress and cause injury to Plaintiff, and therefore Plaintiff is entitled to an award of exemplary and punitive damages under California Civil Code Section 3294 in an amount to be established at trial.

Third Claim For Relief
(Intentional Interference with Prospective Economic Advantage)

34. Plaintiff incorporates by reference each of the allegations in the preceding paragraphs of this Complaint as though fully set forth here.

35. Plaintiff had and, unless irreparably harmed already by the conduct of Defendants, currently has prospective economic advantages in the digital media distribution trade due to its unique products and services. Plaintiff's business and marketing efforts rely upon the inherently valuable goodwill and name recognition associated with IRIS and its products and services.

36. Defendants' conduct was wrongful by a measure beyond the fact of the interference itself. Defendants published false and defamatory statements to Plaintiff's customers and prospective customers and threatened Plaintiff's officers and employees with physical violence.

37. Defendants' unlawful, unfair and/or fraudulent business acts or practices alleged herein, unless enjoined by order of this Court, will continue to cause great and irreparable injury to Plaintiff. Plaintiff has no adequate remedy at law to fully compensate for injuries that it is

1 currently suffering, including the loss of customers, reputation, and goodwill to be suffered from
2 Defendants' unlawful, unfair or fraudulent business acts or practices alleged herein.

3 38. In publishing the false and defamatory statements regarding Plaintiff and
4 committing the other wrongful acts and omissions alleged in this Complaint, Defendants intended
5 to deprive Plaintiff of valuable commercial relationships and to interfere with, and will continue to
6 interfere with, Plaintiff's prospective economic advantages.

7 39. As a direct and proximate consequence of Defendants' interference, Plaintiff has lost
8 and will lose, in whole or in part, said prospective economic advantages.

9 40. As a direct and proximate result of Defendants' interference with Plaintiff's
10 relationships with their customers and all who benefit from the use of the Plaintiff's products and
11 services, Plaintiff has been generally, specially and consequentially damaged in an amount to be
12 proven at time of trial.

13 41. The aforementioned conduct of Defendants was willful and malicious and was
14 intended to oppress and cause injury to Plaintiff, and therefore Plaintiff is entitled to an award of
15 exemplary and punitive damages under California Civil Code Section 3294 in an amount to be
16 established at trial.

17 **Fourth Claim For Relief**
(Negligent Interference with Prospective Economic Advantage)

18 42. Plaintiff incorporates by reference each of the allegations in the preceding paragraphs
19 of this Complaint as though fully set forth here.

20 43. Plaintiff had and, unless irreparably harmed already by the conduct of Defendants,
21 currently has prospective economic advantages in the digital media distribution trade due to its
22 unique products and services. Plaintiff's business and marketing efforts rely upon the inherently
23 valuable goodwill and name recognition associated with IRIS and its products and services.

24 44. Defendants' conduct was wrongful by a measure beyond the fact of the interference
25 itself. Defendants published false and defamatory statements to Plaintiff's customers and
26 prospective customers.
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1 45. Defendants' unlawful, unfair and/or fraudulent business acts or practices alleged
2 herein, unless enjoined by order of this Court, will continue to cause great and irreparable injury to
3 Plaintiff. Plaintiff has no adequate remedy at law to fully compensate for injuries that they are
4 currently suffering, including the loss of customers, reputation, and goodwill to be suffered from
5 Defendants' unlawful, unfair or fraudulent business acts or practices alleged herein.

6 46. In publishing the false and defamatory statements regarding Plaintiff and
7 committing the other wrongful acts and omissions alleged in this Complaint, Defendants knew or
8 should have known about the economic relationships described above, and knew or should have
9 known that these relationships would be interfered with and disrupted if Defendants failed to act
10 with reasonable care in making the statements to Plaintiff's customers and third parties.

11 47. As a direct and proximate consequence of Defendants' interference, Plaintiff has lost
12 and will lose, in whole or in part, said prospective economic advantages.

13 48. As a direct and proximate result of Defendants' interference with Plaintiff's
14 relationships with their customers and all who benefit from the use of the Plaintiff's products and
15 services, Plaintiff has been generally, specially and consequentially damaged in an amount to be
16 proven at time of trial.

17 49. The aforementioned conduct of Defendants was willful and malicious and was
18 intended to oppress and cause injury to Plaintiff, and therefore Plaintiff is entitled to an award of
19 exemplary and punitive damages under California Civil Code Section 3294 in an amount to be
20 established at trial.

21 **Fifth Claim For Relief**
 (Civil Conspiracy)

22 50. Plaintiff incorporates by reference each of the allegations in the preceding paragraphs
23 of this Complaint as though fully set forth here.

24 51. Defendants willfully, intentionally, and knowingly agreed and conspired with each
25 other to engage in the alleged wrongful conduct, including Defendants' publication of false and
26 defamatory statements regarding Plaintiff and interference with Plaintiff's business relationships.

52. Defendants did the acts alleged pursuant to, and in furtherance of, that agreement and/or furthered the conspiracy by cooperating, encouraging, ratifying, or adopting the acts of the others.

53. As a direct and proximate result of the acts in furtherance of the conspiracy, Plaintiff has suffered injury, damage, loss, and harm, including, but not limited to, loss of profits from sales to current and potential customers of Plaintiff. The wrongful conduct committed pursuant to the conspiracy was a substantial factor in causing this harm.

54. Defendants' intentional agreement to commit, and commission of, these wrongful acts was willful, malicious, oppressive, and in conscious disregard of Plaintiff's rights, and Plaintiff is therefore entitled to an award of punitive damages to punish their wrongful conduct and deter future wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Independent Recording Industry Services, Inc. prays for a preliminary and permanent injunction against each Defendant enjoining their continued Defamation and interference with Plaintiff's prospective business advantages, an assessment against the Defendants of interest, costs and reasonable attorneys' fees incurred by Plaintiff, and such other and further relief as the Court may deem just and proper. Specifically, Plaintiff seeks:

1. a preliminary and permanent injunction against each of the Defendants, their officers, agents, servants, employees, attorneys, parent and subsidiary corporations, assigns and successors in interest, and those persons in active concert or participation with them, enjoining them from continued acts of defamation and interference with Plaintiff's prospective economic advantage;

2. a judgment holding Defendants liable for compensatory and consequential damages to Plaintiff for defamation in an amount to be proved at trial but which exceeds this Court's jurisdictional minimum;

1 3. a judgment holding Defendants liable for compensatory and consequential
2 damages to Plaintiff for intentional interference with prospective economic advantage in an
3 amount to be proved at trial but which exceeds this Court's jurisdictional minimum;

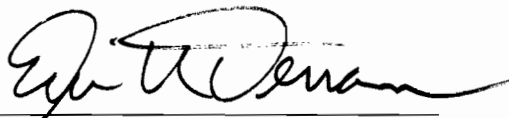
4 4. a judgment holding Defendants liable for compensatory and consequential
5 damages to Plaintiff for intentional interference with prospective economic advantage in an
6 amount to be proved at trial but which exceeds this Court's jurisdictional minimum;

7 5. a judgment holding Defendants liable for exemplary and punitive damages in
8 an amount sufficient to make an example of Defendants and deter them and others similarly
9 situated from engaging in similar wrongful conduct in the future; and

10 6. such other relief as the Court deems just and proper.

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12 DATED: January 18, 2008

JACOBS & FERRARO, LLP

13
14 By: 
15 Eric K. Ferraro
16 Attorneys for Plaintiff
17 INDEPENDENT RECORDING INDUSTRY
18 SERVICES, INC.
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DEMAND FOR JURY TRIAL

Plaintiff Independent Recording Industry Services, Inc. hereby demands a jury trial of this action.

DATED: January 18, 2008

JACOBS & FERRARO, LLP

By: 

Eric K. Ferraro
Attorneys for Plaintiff
INDEPENDENT RECORDING INDUSTRY
SERVICES, INC.